

Benefit Sharing in India: Brief Overview of Current Status

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India's Strategy

- Initially opposed TRIPs and WTO
- Trade Pressure and other factors led to change of stance
- One of the main proponents of benefit sharing at international level
- Two pronged approach:
 - Join TRIPs, but also evolve legal and other policy mechanism to protect genetic resources, traditional knowledge

Major Legislations

- National Biodiversity Act (NBA), 2002 (to comply with CBD)
- Patent Act, 1970 amended 1999,2002,2005 (to comply with TRIPs)
- Protection of Plant Varieties and Farmers' Rights Act (PPVFR), 2001 (to comply with TRIPs and ITPGRFA)
- Geographical Indications and Registration of Goods Act, 1999

National Biodiversity Act

Benefit Sharing:

- case-by-case basis
- Article 21 (1) of the Act, benefit sharing is to be carried out “in accordance with mutually agreed terms and conditions between the person applying for such approval, local bodies concerned and the benefit claimers.”
- National Biological Diversity Act, 2002 at <http://nbaindia.org/content/25/19/1/act.html>

Benefit Sharing under NBA

- Further Article 21 (2) elaborates upon various ways in which benefit sharing can be implemented including: joint ownership of IPR to the NBA or with benefit claimers; transfer of technology; location of production units to improve standard of living of benefit claimers; establishing a venture capital fund for benefit claimers; payment of monetary or non-monetary benefits.
- where money is collected and when the biological resource was a result of access from specific group/individual, the money may be paid directly to that group.

National Biological Diversity Act, 2002 at <http://nbaindia.org/content/25/19/1/act.html>

Benefit Sharing

- National Biodiversity Authority invites applications for accessing biological resources in India; transfer of results of research/resources based on biological resources; approval for IPRs based on biological resources;
- NBA states that it has entered into over a hundred access and benefit sharing (ABS) agreements as of 2012 and has dealt with over 600 applications
- National Biodiversity Authority, "Access and Benefit Sharing Experiences from India" at <http://www.gsbb.in/pdf/annexure-2.pdf>

Benefit Sharing in Practice

- collecting royalties from firms/individuals by the National Biodiversity Authority
- to 2 to 5 % of the gross ex-factory sale of products derived from accessing biological resources or knowledge yearly for the duration of the agreement; 5% of the total ex-factory sales of the product derived from the use of biological resources yearly for the term of the agreement.
- For exporters, the charge is 5% of the free on board value of export consignments. A researcher has to pay 5% of the upfront payment if the patent is licensed to others and also 5% of the ex-factory sales in the event of commercial production from the use of biological resources annually for the term of the agreement.
- National Biodiversity Authority, "Access and Benefit Sharing Experiences from India" at <http://www.gsbb.in/pdf/annexure-2.pdf>

Benefit Sharing in Practice

- It is promised that, "The payment (royalty) in such cases shall be made to NBA which will be ploughed back to the benefit claimers/conservers/growers of biological resources."
- The NBA as of 2012 has received a total of INR 43,39,698 (about \$ 72,000 USD) as royalty from the agreements signed by firms/individuals. The NBA is still in the process of ensuring that at least some of these funds are distributed to local communities.

National Biodiversity Authority, "Access and Benefit Sharing Experiences from India" at <http://www.gsbb.in/pdf/annexure-2.pdf>

Pepsico--seaweed

- Rs.39 lakhs (approximately \$ 65,000 USD, a large part of the total collected) from PepsiCo India Holdings Private Limited for export of seaweed cultivated by the fishing community in the southern Indian state of Tamil Nadu. Approximately 2000 metric tonnes of seaweed have been exported to countries like Malaysia, Philippines and Indonesia by PepsiCo
- Efforts being made to distribute the benefits accrued thus far with 754 benefit claimers spread across 4 districts in Tamil Nadu
- National Biodiversity Authority, "Access and Benefit Sharing Experiences from India" at <http://www.gsbb.in/pdf/annexure-2.pdf>

Bio India Biologicals—Neem

- NBA collected 55,035.00 (about \$ 924 USD) from Bio India Biologicals for the export of 2000 kilograms of neem to Japan
- the local community of the village named Amarchinta in the southern Indian state of Andhra Pradesh, collected and dried the leaves "by undertaking a few special operations" before handing it over to the company for export.
- The NBA states that it has transferred a "part of the royalty amount" to the local biodiversity body in Amarchinta for "planting neem saplings and creation of awareness about biodiversity conservation."
- National Biodiversity Authority, "Access and Benefit Sharing Experiences from India" at <http://www.gsbb.in/pdf/annexure-2.pdf>

Farmer's Rights

- One of the first countries in world to establish law on Farmer's Rights
 - Under India's Act, farmer's can apply for rights similar to breeders
 - As of 2010, three farmers' varieties of rice viz. Indrasan, Hansraj and Tilak Chandan were granted registration, thus, making India the first country in the world to have done so.
 - As of 2010 received 44 applications for registration of Farmers' varieties concerning different crops.
- Annual Report 2009-10, PPVFRA

Benefit sharing under PPVFRA

- any person can file claims for benefit sharing within six months from the date of publication of the details of the registered variety (under Section 26)
 - whereas communities / conservers can file for their rights of benefit sharing / claims under Section 41 and there is as such no time limit for filing such claims
 - Gene Fund and through it dispersal to communities
- Proceedings of National Seminar on 'Section 41 of PPV & FR Act, 2001: Rights of Communities' 25-26 May 2010, New Delhi

Issues

- Benefit sharing is yet to reach the communities
- Overlap of various rights—could lead to ‘anti-commons’ situation
- Ultimate objective of benefit sharing---development or just monetary compensation
- Administrative, legal issues

Research Focus

- Political economy of the process by which the laws have been established in India
- Interviews with stakeholders to map their interests and views on access and benefit sharing
- Options for establishing benefit sharing as a development tool